IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2757 OF 1999

Brihanmumbai Mun.Corporation. ..Petitioners

Vs.

The General Secretary,
BEST Workers' Union and Anr. ..Respondents

Mr.S.K.Talsania a/w Mrs.R.N.Vora i/b Crawford Bailey and Co.for the petitioners

None for the respondents

CORAM : S.U.KAMDAR, J
DATED : 7TH MARCH, 2006

P.C.:

1. The present petition challenges an order passed by the Industrial Court in Revision Application (ULP) no.7 of 1999 and 16 of 1999 under the provisions of section 44 of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971. By the said order and judgment, the revision application filed by the petitioners against the order of the Labour Court

holding that the punishment imposed is disproportionate to the charges levelled and thus consequently is an unfair labour practice under item 1(g) of the Schedule IV of the MRTU and PULP Act, 1971 has been dismissed. Some of the material facts of the present case are as under:

2. On 17.7.91 while driving a bus in a direction of J.J.Hospital, the respondent no.2 who was a driver of BEST bus knocked down a cyclist who was proceeding ahead of the bus in the same direction. The cyclist fell down on the road and the left rear tyre of the bus ran over his head resulting in constant death of the cyclist. Criminal proceeding was filed under section 304(A) of the Indian Penal Code for rash and negligent driving and simultaneously departmental enquiry was also commenced against the said driver.

3. On 14.8.91, the driver was charge-sheeted and for the aforesaid incident was given a time to file a reply. The driver who is the respondent no.2 herein filed a reply and produced the witness. After full fledged departmental enquiry, a report

was filed by the Enquiry Officer and the Enquiry Officer held that the respondent no.2 is guilty of breach of standing order 20(j) "gross negligence' and after perusing the facts recommended the dismissal order as a proper punishment. Ultimately on 14.1.92, the respondent no.2 was dismissed from the service.

4. Against the said order of dismissal, respondent no.2 filed two internal appeals before the appellate authorities who also dismissed his appeals.

5. Respondent no.1 who is the union and respondent no.2 who is a member of the respondent union thereafter, filed a complaint before the labour court under item 1 (a), (b), (c), (d), (f) and (g) of Schedule IV of the MRTU and PULP Act, 1971 being complaint (ULP) No. 67 of 1995. The said complaint was filed on 1.2.95. By the said complaint, respondent no.1 challenged the said order of dismissal passed against respondent no.2 and claimed reinstatement with full back wages. The labour court after framing the issues has given

a finding that the petitioners have not committed any unfair labour practices under item 1 (a), (b), (c), (d) and (f) of schedule IV of the Act. However, in respect of item 1 (g) a finding has been given that an unfair labour practices has been practiced by the petitioners by virtue of giving a punishment of discharge from the service because according to the labour court it was found that the said punishment is disproportionate to the charges levelled against the petitioners herein.

6. Being aggrieved by the said order and judgment of the labour court dt.13.11.98, the petitioners filed a revision application. Similarly, respondent no.1 also filed a revision application. Both the revision applications were heard by the Industrial Court and by an order and Judgment dt.18.6.99 interalia has dismissed both the revision applications and uphold the order passed by the labour court dt.13.11.98. Petitioners have challenged the said finding of the labour court and consequential upholding thereof by the industrial court by filing the present writ petition.

7. The petition was admitted. Respondents are served. Petitioners have produce the service report by the sheriff. Respondent no.1 union has accepted the service for both respondent no.1 and 2. Petitioner undertakes to file affidavit of service within period of one week from today. The sheriff has submitted the Rule NISI. Original Rule NISI alongwith endorsement of the service dt.11.2.04 is taken on record. Inspite of the service of the petition, respondent no.1 and 2 are not appearing in the present writ petition. Matter was on board yesterday. None appeared for the respondents. Matter is kept on board today. Today also none appears for the respondents. In that view of the matter, the petitioners have proceeded ex-parte.

8. The learned counsel for the petitioners has contended that under the provision of item 1(g) of schedule IV of the MRTU and PULP Act, 1971, it is interalia contemplated that if there is a major penalty imposed for a minor or technical misconduct then such punishment can be set aside as amounting

to a shockingly disproportionate punishment otherwise the labour court has no jurisdiction to interfere with the punishment imposed by the employer. Provisions of item 1(g) of schedule 4 to the MRTU and PULP Act, 1971 reads as under:

> "1(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record of service of the employee, so as to amount to a shockingly disproportionate punishment."

9. The learned counsel for the petitioner has also relied upon the Judgment of the apex court in the case of Colour-Chem Ltd. Vs. A.L.Alaspurkar and Ors reported in (1998) 3 Supreme Court Cases 192 and he particularly relied upon para 11 of the judgment. The portion of which reads as under:

> "Only one reasonable construction is possible on the express language of clause (g), namely, that it seeks to cover only those types of unfair labour practices where minor misconduct or technical misconduct has resulted in dismissal or discharge of delinquent workmen and such punishment in the light of the nature of misconduct or past record of the delinquent is found to be shockingly disproportionate to the charges of minor misconduct or

> charges of technical misconduct held proves against the delinquent. The one and only subject-matter of clause (g) is the misconduct of minor or technical character. The remaining parts of clause do not indicate any separate subject-matter like the major misconduct. But they are all adjuncts and corollaries or appendages of the principal subject, namely, minor or technical misconduct which in a given set of cases may amount to resulting in a shockingly disproportionate punishment if they are followed by discharge or dismissal of the delinquent. The first point, therefore, will have to be answered in the negative in favour of the appellant and against the respondent-delinquents."

10. The learned counsel for the petitioners relying upon the aforesaid judgment has contended that once the labour court has given a finding that no unfair practices has bene practiced in respect of any of the items save and except item 1(g) the question of then holding that the punishment is disproportionate to the charges levelled cannot arise unless and until labour court gives a finding that the misconduct is of technical and / or minor nature.

11. He contends that under the standing order 20(j) misconduct prescribed is of gross negligence. He submits that the present case is a case of gross

negligence. He further submits that in case of a driver a misconduct resulting in third persons death is a major misconduct and cannot be treated as misconduct of minor nature or technical nature. He further submits that the driver is supposed to drive a vehicle in a manner so as not to endanger the life of a third person and therefore in the facts of the present case where he has pushed down the cyclist from behind is a gross patent negligence and must consequently result in a major penalty because it is a major misconduct. He has submitted that the labour court has erred in relying on item 1(g) of schedule IV of the MRTU and PULP Act,1971 and thus, the order passed by the labour court requires to be interfered with. He further submitted that in the light of the judgment of the apex court in the case of Colour-Chem (Supra), once a misconduct is not of a minor and technical nature then it is not open for the labour court to exercise discretion under the said item to interfere with the imposition of a penalty by the employer on the ground that the same is disproportionate to the charges levelled. He submits that therefore, the order of labour court

as upheld by the Industrial court requires to be interfered with and therefore, the same should be set aside.

12. I have heard the learned counsel for the petitioners. I am of the opinion that the order passed by the Labour court and upheld by the Industrial court is erroneous and requires to be interfered by this court under Article 226 of the Constitution of India. I am of the opinion that once the finding is given that there is no victimisation under item 1(a) of Schedule IV and it is held that the imposition of a penalty is in respect of major misconduct then it is not open for the Labour court to interfere with the penalty imposed by the employer by interfering with the same on the ground that the same is disproportionate to the charges levelled. In my opinion, once it is a major penalty then it is for the employer to determine whether the penalty should be imposed of a nature which is permissible under their standing orders or not. In my opinion, otherwise also the charge which is levelled against respondent no.2 who is a bus driver is a serious

nature which has resulted in death due to a total negligent act on the part of the respondent no.2. The job of a driver requires utmost care in the discharge of his job because life of various other persons depends upon it. It is not permissible to hold that the driver who has committed death of an individual by virtue of his negligent act which is per se gross negligent, ought not to be leniently looked into. The driver of the BEST Bus is not only required to look at safety of people who are travelling on the road but also of the passengers who are travelling in the bus itself.

13. In my opinion, a case of major penalty has been made out and therefore interference by the labour court by substituting the punishment from dismissal of service to reinstatement without back wages cannot be sustained. Order passed by the labour court is, therefore, erroneous on the face of it. Reliance placed on item 1(g) is also per se erroneous and in any view contrary to the judgment of the Apex court in the case of Colour-Chem (Supra) and thus, orders passed by lower courts cannot be sustained in law. Thus, the order passed

by the Industrial court in so far as revision application no.16 is concerned is quashed and set aside. Revision application is allowed. Order passed by the Labour Court directing the petitioners to reinstate respondent no.2 without back wages is also required to be quashed and set aside and complaint (ULP) No.67 of 1995 is dismissed. Petition is allowed accordingly. There shall be no order as to costs.